No. 500

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

SEWELL HATS, INC.
Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

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CITATIONS OF AUTHORITY

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To the Honorable The Chief Justice, and Associate Justices of The Supreme Court of the United States:

Comes now SEWELL HATS, INC., and prays that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit to review here the record and judgment entered by that Court on the 7th day of August, 1944, wherein petitioner was appellant and National Labor Relations Board was appellee. (P. A. page 1.)

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is as follows:

"IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 10942

SEWELL HATS, INC.
Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Review of an Order of the National Labor Relations Board, sitting at Washington, D. C., July 6, 1944

Before SIBLEY, HOLMES, and McCORD, Circuit Judges.

McCORD, Circuit Judge: The Sewell Hats, Inc., petitions for a review and to set aside an order issued by the National Labor Relations Board pursuant to Section 10 (c) of the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. Sec. 151 et seq.

"The Board found that the petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) and Section 8 (1) and (3) of the Act, by questioning employees concerning union membership and activities, threatening them with discharge because of such activities, and by discharging two employees and laying off a third because of their union membership and activities. The Board's order requires petitioner to cease and desist from its unfair Labor practices, to offer reinstatement with back pay to the

three employees which it alleges were discriminated against, and to post appropriate notices.

"Mrs. R. A. Sewell was president and general manager of the Sewell Corporation. A group of employees called on her and requested an increase in wages. Mrs. Sewell declined such increase and thereupon the employees became dissatisfied and the group decided to form a union. The evidence shows that Mrs. Sewell sought to prevent the union from being organized. Much of the evidence goes to show that through certain of her employees she used influence against the organization of the union. One of her assistants, and who was regarded by the employees as an officer and from whom they took orders from time to time, aided Mrs. Sewell and advised certain of the employees not to join the union and that to join would displease Mrs. Sewell. A meeting of certain of the employees was called by Mrs. Sewell and at this meeting she sought and found out the names of each one of the employees who were leading in the attempted organization.

"One of her foremen was instructed to train another to work at one of the machines in his department preparatory to laying off an employee who had been instrumental in the attempted organization, and who worked regularly at the machine in question. Boykin Barnett had taken a leading part in signing up employees for the union. While the mill had been shut down he injured his hand and when he returned to work he was told that he could not have his place. He was regarded as one of the best workers and was able to block as many as 100 dozen hats in one day. He was not permitted to return to work, although there was a shortage of labor at that

time. It required two new employees to fill his place. This foreman explained to Mrs. Sewell that the attempted changes in his department would reduce efficiency and otherwise interfere with the work and he thereupon quit the services of the Hat Corporation.

"The evidence further shows that the two employees discharged and the one laid off had been active and instrumental in seeking to organize the union. Therefore, the Board was warranted in ordering the reinstatement of Willie Dodson, Lovena Johnson and Boykin Barnett.

"No good purpose can be served by setting out the evidence at length. It is sufficient to say that the Board's findings of fact were supported by substantial evidence.

"We are of opinion that there was substantial evidence to support the Board's finding that petitioner had engaged in interference, restraint and coercion, in violation of Section 8 (1) of the Act. Petitioner's attempt to ascertain and identify the union leaders, its interrogation of employees concerning their union membership and activities, and its threats to discharge employees if they joined the union have been held many times to be in direct violation of the National Labor Relations Act. N. L. R. B. v. Richter's Bakery, 140 F. (2) 870; Humble Oil & Refining Co. v. N. L. R. B., 140 F. (2) 277; N. L. R. B. v. Brown Paper Mill Co., 133 F. (2) 988; H. J. Heinz Co. v. N. L. R. B. 311 U. S. 514; N. L. R. B. v. Alco Feed Mills, 133 F. (2) 419.

"The petition to set aside the order is denied and the order for enforcement is hereby granted.

OAKLEY F. DODD
Clerk of the United States Circuit
Court of Appeals for the Fifth Circuit."

SUMMARY STATEMENT OF THE MATTERS INVOLVED

Petitioner is a corporation organized and doing business under the laws of the State of Georgia and maintains a hat manufacturing business, its principal office and place of business being at Red Oak, Georgia.

The complaint alleged that Petitioner engaged in unfair labor practices at Red Oak, Georgia; that petitioner was engaged in, and that its business affected, Interstate Commerce, that its activities tended to lead to labor disputes, burdening and obstructing Interstate Commerce. The complaint further alleges that said acts were unfair labor practices, as defined by the National Labor Relations Act.

On July 31, 1943, the complaint was amended charging Petitioner with having engaged in unfair labor practices within the meaning of Section 8 (1) (3) and (4) of said Act in that Petitioner discharged Julia Scarbrough on May 7, 1943, and Boykin Barnett on May 26, 1943, because of their membership and activities on behalf of Congress of Industrial Organizations and because they engaged in concerted activity with other employees; that Petitioner discriminatorily discharged Willie Dodson. The amended complaint further charges Petitioner with having interfered with, restrained and coerced the said employees of Petitioner in the exercise of rights guaranteed by Section 7 of the said Act.

On July 31, 1943, the Board, through its Regional Director, issued notice to Petitioner, which was served on July 31, 1943, that a hearing would be held at 10 A. M. on August 11, 1943, in the Ten Forsyth Street

Building, at Atlanta, Georgia. Petitioner was further notified that it had the right to file with the Regional Director for the Tenth Region, with offices in Atlanta, Georgia, an answer to the complaint on or before August 10, 1943; that on said date Petitioner filed its response to said complaint with said Regional Director.

The response of Petitioner filed with said Regional Director denied, in substance, the allegations of the complaint in its entirety, and denied specifically all allegations of fact in the complaint which charged acts of interference with the rights of employees guaranteed by the National Labor Relations Act.

The hearing on said complaint and response filed thereto, began on August 16, 1943. At said hearing it was stipulated:

(1) That Petitioner was engaged in Interstate Commerce and its business affected Interstate Commerce;

(2) Sewell Hats, Inc., is a Georgia Corporation engaged in the manufacture of wool hats at Red Oak, Georgia. During 1942 the company purchased war materials valued in excess of $50,000, in excess of 50 per cent of which was shipped from points outside of the State of Georgia. During the same period the company manufactured finished products valued in excess of $100,000, more than 50 per cent of which was shipped to points outside of the State of Georgia.

The Board relied upon certain circumstances as proof of interference with the rights of employees to join labor organizations the reasons for the discharge and lay off of employees.

The hearing was concluded on August 25, 1943, and on October 8, 1943, the Trial Examiner, Henry J. Kent, filed his intermediate report.

Within ten days after the filing of said intermediate report, Petitioner filed exceptions to all findings, conclusions and recommendations in said report which were in favor of the complaining Union and against Petitioner. Exceptions were filed to certain specific statements or findings of fact in the intermediate report, as well as to the ultimate findings on the law. The trial examiner in the intermediate report found that there was no discrimination against Julia Scarbrough in laying her off.

The facts failed to show domination and interference with the formation and administration of the Congress of Industrial Organizations.

Thus, the decree is error because the evidence adduced upon the hearing fails to prove any of the facts alleged in said complaint. On the contrary the uncontradicted evidence coming from Mrs. Sewell and her superintendent, Mr. Robinson, show that they advised the employees that they were at liberty to organize the union if they so desired. See their evidence. Mr. Robinson, page 346, Petitioner's record; Mrs. Sewell, page 5 and 6 Petitioner's record; also Mrs. Gertrude Kimbrough, page 686 through 689. The evidence of these witnesses, positively sworn to, conclusively show the attitude of Mrs. Sewell concerning her relation to the union and toward her employees during the entire time that they were contemplating the organization of the union.

The Trial Examiner erred in failing to approve of the exceptions filed by Sewell Hats, Inc., and the Board

erred in approving of said exceptions, excerpts to that portion of the exceptions being:

"Council for respondent expressly excepts and assigns as error the ruling of the trial examiner in overruling and denying the motions of respondent to strike all evidence admitted over their objections and to dismiss the complaint in its entirety, also to dismiss the allegations of the complaint in respect to the alleged acts of interference, restraint and coercion; said motion being as follows:

" 'I want to renew my objection, all objections to the evidence as were made during the progress of the trial, and I want to renew all motions that were made by the respondent during the progress of the trial, to strike the evidence, and especially that evidence which was objected to on the grounds of hearsay, and on the ground that the conversation took place in the plant and out of the plant between each and all of these employees among themselves out of the presence and hearing of Mrs. Sewell, as rank hearsay, incompetent and inadmissible and none of which has been connected with any other connecting link by the complainants in this cause, and on the further ground that none of said evidence is germane to the issues made by the pleadings and does not, in any sense, support the pleadings set out in the complaint in this cause.

" 'In other words, I want to renew all objections made to the evidence, all the motions made to strike, and insist now that all such evidence be ruled out from this record on each and all the grounds made during the progress of the trial.

" 'I want to make a motion at this time to dismiss the complaint on the ground that the evidence adduced upon the hearing is wholly insufficient in law to be the basis of an order to desist or an order to restore each of these complainants named in the complaint.

" 'I make a motion to dismiss the complaint on the further ground that there has not been shown a single fact under any of this evidence that will uphold the facts as alleged in the petition as charged against either of the respondents, Sewell Hats, Inc., or Mr. Wheeless, either in paragraph 12 or otherwise; especially on the ground as to the Respondent Wheeless, that there is not a line of evidence to show that he procured, authorized Mrs. R. A. Sewell, Robert A. Sewell, Hugo Sewell or Mrs. Myrtie Pattillo, Leon Cosper or one Scogin to do any of the things charged in the complaint, either in paragraph 12 or otherwise, and on the further ground that neither did Mrs. Sewell procure for herself, or for the corporation either of said parties named, Robert A. Sewell, Hugo Sewell, Mrs. Myrtie Pattillo, Leon Cosper, or one Scogin to do any of the things charged and claimed in paragraph 12 of the petition, or otherwise, nor did she suffer them to be done by the named persons or otherwise.

" 'On the further ground that the charges named in the amendment, that the Respondent Wheeless nor Mrs. Sewell, nor Mrs. Sewell as directing head of said corporation, did discriminatorily discharge Willie Dodson or Lovena Johnson on the ground and on the basis as charged in said amendment; that the evidence is wholly insufficient to warrant the accusations as charged by said amendment.' "

Petitioner says that said motion should have been sustained on each and all the grounds set forth therein.

Petitioner insists that the exceptions of Paragraph Three should have been sustained, the same being as follows:

"Said ruling of the trial examiner is error and should not be approved by this Board because the evidence adduced upon the hearing and as set forth by him to uphold the charges made by the pleading and by the evidence, is wholly insufficient in law to be the basis of proof of the facts as charged in said bill of complaint; said evidence being based upon idle rumors and casual conversations between the employees in said plant, none of said evidence being brought to the attention of the directing heads of said business and all of said evidence consisted of conversation and is, therefore, rank hearsay and without probative value; that said evidence is too vague and indefinite to be the basis of the affirmative relief recommended by the trial examiner.

"Respondent excepts to the ruling of the trial examiner on each and all the grounds above stated and set forth."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Four should have been sustained, the same being as follows:

"Sewell Hats, Inc., admits that the Honorable Henry J. Kent, the trial examiner, fairly stated the business

engaged in by respondent as set forth in his report, but denies the following stipulation and agreement, to-wit:

" 'That the Congress of Industrial Organizations is a labor organization within the meaning of the Act.' Respondent denies that any such stipulation was made, and further denies that the record shows that any such stipulation was made, and further denies that the record shows that any such agreement was entered into."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Five should have been sustained, the same being as follows:

"Respondent denies the chronology of events as outlined by the trial examiner in Paragraph 3 of the report, to-wit: 'The Unfair Labor Practices' on the ground that the conclusions reached by him as stated in all the paragraphs of said section of said report is not borne out by the evidence and does not briefly summarize in substance the facts as disclosed by the evidence that was adduced on the hearing."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Six should have been sustained, the same being as follows:

"On the further ground that said findings of the trial examiner is based upon rank hearsay evidence consisting largely of idle rumors and casual conversation negaged in by employees one with the other and in the absence of Mrs. Sewell who was the sole managing officer in said corporation, there being no affirmative or direct evidence coming from any of said witnesses which will authorize in law the findings as outlined by him.

"Therefore, the respondent excepts to said findings of fact and assigns the same as error. That the same should not be adopted and approved by the Board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Seven should have been sustained, the same being as follows:

"Respondent excepts to 3 (b) of the report filed by the trial examiner by denying that the conclusions reached by him as stated in his report is warranted by the testimony of the witnesses."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Eight should have been sustained, the same being as follows:

"Respondent further excepts to the findings of the trial examiner as carried in B (6) of said report, to-wit: 'Mrs. Sewell testified that her only purpose in sending for Kimbrough was to "verify" what Pattillo had told her concerning her conversation with Kimbrough. Whatever the purpose may have been at the time, it is obvious that the effect of such conduct by an employer would discourage proper union activities by employees,' on the grounds that said conclusion of the trial examiner was not warranted by the evidence adduced upon the hearing in said matter. Therefore, the same should not be approved as findings of fact by this Board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Nine should have been sustained, the same being as follows:

"Respondent further excepts to the conversation between the Janitor, Solley, Lovena Johnson, Willie Dodson, Florie Smith and Ruth Webb, said conferences being held out of the presence of Mrs. Sewell and consist of the unsworn statement of Solley which could not in any sense bind Mrs. Sewell. The fact that he did not appear and give evidence on the trial does not, in any sense, indicate that what he said to them was the truth and was binding on Mrs. Sewell. Therefore, respondent excepts to said findings and conclusions reached by him, to-wit:

" 'Such a remark by an employer clearly constituted interference with the right of employees to organize

within the meaning of the Act.' Therefore, the findings of said trial examiner in this regard is wholly without evidence to support it, and should not be approved by this board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Ten should have been sustained, the same being as follows:

"Respondent further excepts to the findings of the trial examiner which is as follows, to-wit:

" 'In view of the Kimbrough incident and the Glass-Barnett incidents discussed above, together with a consideration of all other evidence in the record, the undersigned accepts Kimbrough's version of the incident as credible and accordingly finds that Pattillo asked Davis not to join the Union.' That said findings of the trial examiner is not warranted by the evidence adduced upon the hearing in said case that same constituting rank hearsay and being idle gossip carried on by employees in the organization, which conversation and idle gossip is without probative value. Therefore, respondent excepts to said findings and insist that the same should not be approved as findings of fact by this Board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Eleven should have been sustained, the same being as follows:

"Respondent further excepts to the alleged conversation between Samuel Sprayberry and Leon Cosper. The findings of fact of said trial examiner being as follows:

" 'Cosper denied having made the above statement to Sprayberry. Sprayberry impressed the undersigned as a truthful witness, while Cosper was evasive and argumentative in giving his testimony. The undersigned accepts Sprayberry's testimony as credible and true.' Respondent excepts to said finding of the trial examiner on the ground that said evidence is inadmissible and without probative value. The same being rank hearsay. Therefore, the same should not be held against respondent in said findings of fact as above outlined especially so when erspondent was not present and knew nothing about said coversation or the facts testified to by the witnesses."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Twelve should have been sustained, the same being as follows:

"Respondent further excepts to that part of the findings of fact by the trial examiner concerning Mrs. Pattillo, the same being as follows:

" 'Foreman Beck testified that on occasions when Mrs. Sewell has been away from the plant on business, or

other trips, Pattillo came into his department to give him his orders and that he also went to her for instruction. Dodson testified that on one occasion when Mrs. Sewell was in Boston, Massachusetts, Pattillo was in the finishing department. Dodson felt ill at the time and told Pattillo. The latter then said 'You get up and go home.' Before leaving, Dodson told Foreman Beck that Pattillo had told her and Beck did not question Pattillo's authority to excuse Dodson. Pattillo denied having any supervisory authority and said that she only acted as an intermediary for Mrs. Sewell in transmitting orders.

" 'In addition to the facts mentioned above tending to show the supervisory capacity of Cosper, Foreman Beck testified that Cosper was foreman of the box department and ordinarily had four or five employees working under his supervision.

" 'In the instant case the employees of the respondent Sewell could have regarded Pattillo's and Cosper's statements only as emanating from the respondent, in view of the positions they occupied as shown by this record.' Said findings of fact and conclusions reached by him being without evidence to support it and based upon conversation which Mrs. Sewell knew nothing about; the uncontradicted, positive evidence being to the contrary. Therefore, respondent excepts to said findings of fact and insist that the same should not be allowed and approved by this board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Thirteen should have been sustained, the same being as follows:

"Respondent excepts to 3 (c) of the report filed by the trial examiner by denying that the conclusions reached by him are warranted by the testimony of the witnesses adduced upon the hearing and carried in the record. Respondent further denies the conclusions reached by him and excepts to same as set forth in 3 (c) of his said report especially so in view of the evidence of the newly appointed Superintendent of the plant, Mr. Robinson, who testified Boykin Barnett's work was unsatisfactory, that the type of work put out by him was very defective and explained in detail, the trial examiner not having mentioned these defects as mentioned in the evidence of Robinson. The conclusions reached by him are not tenable and should not be approved by this board."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Fourteen should have been sustained, the same being as follows:

"Boykin Barnett was discharged because of his inability to put out sufficient work and by him becoming injured and unable to perform any work whatsoever, then it was that Mrs. Sewell gave him his separation papers which she had a perfect right to do both in law and in fact. Said findings of the trial examiner and his conclusions are as follows:

" 'From the above, it is clear that Barnett was outstanding for his Union activities among the employees and the undersigned concludes and finds that he was discharged for engaging in these activities.' Therefore, the same is without evidence to support it. Mrs. Sewell has never directly or indirectly indicated by circumstances or otherwise that Barnett's discharge was based on any other reason than his inability to put out sufficient work and that he was so injured that he could not perform the duties under his contract of employment."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Fifteen should have been sustained, the same being as follows:

"Respondent excepts to the conversation between Lillian Ford and witness Beck as carried in said report of the trial examiner, said conversation being made in the absence of Mrs. Sewell. Therefore, the same is without probative value and could not be used in law against respondent as neither of said employees were authorized to make statements and bind respondent."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph

Sixteen should have been sustained, the same being as follows:

"Respondent excepts to the findings of the trial examiner concerning the discharge of the employee, Willie Dodson, his findings being in the following form, to-wit:

" 'The undersigned concludes and finds that the respondent Sewell discharged Dodson because of her union activities and also because she has given testimony at a Board hearing held under the provisions of the Act.' Said findings are without evidence to support it and contrary to the evidence adduced upon the hearing in said case. That said findings were largely based upon idle gossip and conversations between employees and not based upon any positive facts coming from any of the witnesses or from Mrs. Sewell herself. On the contrary the evidence of Mrs. Sewell, which is quoted by the trial examiner, does not warrant the conclusions reached by him but on the contrary conclusively exonerates Mrs. Sewell of the charges preferred in the findings of fact as above quoted. Therefore, respondent excepts to said findings of fact and insist that the same should not be approved as true and correct; that an order should not be entered against respondent based thereon."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error and the Circuit Court of Appeals erred in granting the order of the National Labor Relations Board.

Petitioner insists that the exceptions of Paragraph Seventeen should have been sustained, the same being as follows:

"Respondent excepts to the findings of fact made by the trial examiner concerning Lovena Johnson, his findings being as follows:

" 'From the above the undersigned concludes and finds that Lovena Johnson was laid off on June 11, 1943, because she had engaged in concerted union activities and also because she had given testimony as a witness, for the Union, at a hearing before the National Labor Relations Board on June 2, 1943.' Said findings being contrary to the evidence and without evidence to support it. The same is based largely upon hearsay which consist of conversation and idle rumors made by employees in the plant of which Mrs. Sewell knew nothing about. Therefore, the findings of the trial examiner is excepted to, the same being contrary to law and the evidence and the same should not be approved by this Board on the grounds hereinabove set forth."

Petitioner shows that the exceptions should have been sustained on each and all the grounds set forth. Therefore, the Board's refusal to sustain said exceptions and the approval thereof by the Fifth Circuit Court of Appeals is error and the same should be reversed.

Petitioner insists that the exceptions of Paragraph Eighteen should have been sustained, the same being as follows:

"Respondent excepts to the findings of fact made by the trial examiner concerning Boykin Barnett, Willie Dodson and Lovena Johnson, based upon all the evidence in the record which concerns the refusal of Mrs. Sewell to reinstate these named persons on the ground that said

statement and findings of the trial examiner is without evidence to support it. The same consist of hearsay evidence which consist of idle rumors and conversations between employees and could not be used as the basis of findings of fact as above set forth."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Nineteen should have been sustained, the same being as follows:

"Respondent is in accord with the views of the trial examiner as carried in 3 (d) of his said report but not with the conclusions reached by him; the evidence being that her services at Sewell Hats, Inc., consisted of operating a printing press and she being without experience and the plant not needing printing matter in quantities sufficient to authorize a full time printer, and Hugo Sewell being a trained printer testified that he could operate the printing press by working two hours per day and doing all the printing necessary for the use of said plant; these are the reasons that Julia Scarbrough's services were dispensed with."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Twenty should have been sustained, the same being as follows:

"The findings of the trial examiner as set forth in Paragraphs Four and Five and the conclusions as follows: 'One, Two, Three, Four, Five and Six are excepted to. Respondent denies the said conclusions are warranted by the evidence and the law of the case, as cited by him, is not applicable to the facts set forth in this case!"

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

Petitioner insists that the exceptions of Paragraph Twenty-one should have been sustained, the same being as follows:

"The recommendations of the trial examiner in his findings and conclusions reached therein, and as set forth on page sixteen and seventeen of his report, is excepted to and the same is not warranted by the evidence adduced upon the hearing in said case. Said recommendations being contrary to law and without evidence to support it and especially the facts are not applicable to the issues involved in this controversy."

Petitioner shows that the exceptions should have been sustained on each and all the grounds above set forth. Therefore, the Board's refusal to sustain said exceptions is error.

On January 5, 1944, the Board rendered its decision and filed its order with respect thereto and making ultimate findings, in substance, to the effect that (1) Willie Dodson was discharged for Union activity; (2) Boykin Barnett was discharged for Union activity; (3) Lovena

Johnson was laid off for Union activity and was refused re-employment subsequently for the same reason.

Said order entered by the Board and directed to Petitioner, for a review of which this petition is filed, reads as follows:

"Order

"Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Sewell Hats, Inc., Red Oak, Georgia, its officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"(a) Discouraging membership in the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

"(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"(a) Offer to Boykin Barnett, Willie Dodson, and Lovena Johnson, immediate and full reinstatement to

their or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

"(b) Make whole Boykin Barnett, Willie Dodson, and Lovena Johnson for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment of each of them of a sum of money equal to that which he or she normally would have earned as wages from the date of his or her discharge or lay-off to the date of the respondent's offer of reinstatement, less his or her net earnings during said period;

"(c) Post immediately in conspicuous places in its plant in Red Oak, Georgia, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered that it cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Congress of Industrial Organizations, and that the respondent will not discriminate against any of its employees because of membership in or activity on behalf of that organization; and

"(d) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from this Order, what steps the respondent has taken to comply herewith.

"It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent discriminated in regard to the hire and tenure of

employment of Julia Scarbrough within the meaning of Section 8 (3) of the Act, and that respondent discriminated in regard to the hire and tenure of Willie Dodson and Lovena Johnson within the meaning of Section 8 (4) of the Act.

"Signed at Washington, D. C., this 5 day of January, 1944.

HARRY A. MILLIS,
Chairman,

GERARD D. REILLY,
Member,

JOHN M. HOUSTON,
Member,

NATIONAL LABOR RELATIONS BOARD."
(Seal)

The above quoted order, the findings of fact and conclusions of law upon which said order is based, and certain statements and findings included in the decision upon which said order is based, in the above mentioned proceedings styled "In the Matter of Sewell Hats, Inc., and Congress of Industrial Organizations," being Case Number 10-C-1363 on the docket of the National Labor Relations Board, are erroneous and contrary to law, and are not supported by sufficient evidence to authorize the findings and the decree entered in said case.

The order of the Board (paragraph 1 (b)) requiring Petitioner to cease and desist from:

"Discouraging membership in the Congress of Industrial Organizations, or any other labor organization of

its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment" is erroneous because it is so vague and indefinite that Petitioner cannot comply with such order because (1) Petitioner has no way of knowing what acts of the officers or executives should be ceased and desisted from; (2) the order does not point out the specific acts which Petitioner should cease and desist from, and the record is devoid of any information or guidance to Petitioner in ascertaining how to comply with such order; and (3) Petitioner has no way of knowing what other "labor organization" the Board refers to in such order.

The Board erred in ordering Petitioner (paragraph 2 (b)) to make whole Boykin Barnett, Willie Dodson and Lovena Johnson for loss of pay by paying to them the wages they normally would have earned from the date of discharge to date of offer of reinstatement, less net earnings during said period, because said order is so vague and indefinite that petitioner cannot comply with it. Petitioner cannot comply with such order because (1) the amount of the net earnings of each of these persons respectively, is not determined in any manner by the Board and Petitioner has no way of knowing what such net earnings are;

(2) Petitioner should not be required to accept any figure given by the respective complainants; and (3) there is no finding by the Board as to what it considers the normal wages of these persons.

Wherefore, Sewell Hats, Inc., petitions this Honorable Court for a review of the aforementioned order, entered

by the Board on January 5, 1944, in the proceedings entitled "In the Matter of Sewell Hats, Inc., and Congress of Industrial Organizations," being Case Number 10-C-1363, and your petitioner respectfully prays:

(1) That the Board be directed to certify and deliver to your Petitioner a transcript of the entire record in the aforementioned proceedings before the Board;

(2) That the Petitioner may be granted leave to file such certified record in the proceedings before the Board within a reasonable time to be fixed by this Honorable Court; and

(3) That the aforesaid order of the Board be set aside and held for naught and that your Petitioner, its officers, agents, and representatives be relieved by order of this Honorable Court from the necessity of complying therewith; and

(4) That in the event the entire order is not set aside, then that such portions of the order as are justly complained of be set aside and held for naught and that your petitioner, its officers, agents and representatives be relieved by order of this Honorable Court from the necessity of complying therewith.

And your Petitioner will ever pray.

Respectfully submitted,

(Signed) O. C. Hancock

(Signed) Clifford R. Wheeless

Attorneys for Petitioner.

The Fifth Circuit Court of Appeals approved all of the findings, rulings and decisions of the Trial Examiner and as approved by the National Labor Relations Board all of which rulings are erroneous and not borne out by the evidence adduced upon the hearing.

Petitioner therefore, insists that the certiorari should be granted and the decision of the Court below reversed for the reasons above set forth and for the further reason that the evidence adduced upon the hearing in this cause is wholly insufficient to warrant the conclusion reached by the National Labor Relations Board and by the Fifth Circuit Court of Appeals. The uncontradicted evidence in the case shows that the employees of Sewell Hats, Inc., were not interfered with in their efforts to organize a union. An election was held, as provided by the Act, and the majority of the votes was cast against the union and this ended union activities in the plant of petitioner. Previous to this time, however, and in the beginning of negotiations by the employees with petitioner and after peaceful meetings had been held on the premises of employer by the union officials and the employees, a representative of the employees met with the officials of the company and agreed upon a plan which was carried out. (Petitioner's record, Mr. Robinson, page 346, Mrs. Sewell, page 5 and 6 and Mrs. Gertrude Kimbrough, page 686 through 689.). Nobody was intimidated, coerced or forced either directly or indirectly into any act or deed for or against the formation of the union by employees. Thus it is respectfully insisted that the certiorari should be granted and the decision of the lower Court reversed.

The discharged employee, Boykin Barnett, was dis-

charged because of an injury received by him, not in line of duty but while off the job away from the plant and his failure to report to work was given as the reason for his discharge. These facts are undenied in this record. Hence, the certiorari should be granted and the decision of the Court below reversed.

Petitioner shows that the employee, Willie Dodson, was discharged because she failed to show up for work at the regular time and without giving a satisfactory excuse to petitioner.

Lovena Johnson was laid off because she was working straws and that the season for sewing straws had ended and for the further reason that she met her employer at the gate and proceeded to abuse her in a most unusual manner, that on account of this abuse she did not return to her work. (P. R. Page 100-101.)

ASSIGNMENTS OF ERROR

1. The Board and the Court erred in adopting the findings of the Trial Examiner that petitioner has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the rights guaranteed in Section 7 of the Act.

2. The Board and the Court erred in adopting the findings of the Trial Examiner that Boykin Barnett was discharged from the employ of petitioner for engaging in outstanding union activities.

3. The Board and the Court erred in adopting the findings of the Trial Examiner that Willie Dodson was

discharged by petitioner because of her union activities.

4. The Board and the Court erred in adopting the findings of the Trial Examiner that Lovena Johnson was laid off on June 11, 1943, because she had engaged in concerted union activities.

5. The Board and the Court erred in adopting the findings of the Trial Examiner that Boykin Barnett and Willie Dodson were discharged, and Lovena Johnson laid off, and that petitioner has since refused to reinstate them because of their activities on behalf of the Union.

6. The Board and the Court erred in adopting the findings of the Trial Examiner that petitioner's activities as set forth in Section 3 of the Trial Examiner's findings tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

7. The Board and the Court erred in adopting the findings of the Trial Examiner that petitioner had made anti-union statements and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

8. The Board and the Court erred in ordering petitioner to cease and desist from:

(a) Discouraging membership in the Congress of In-Industrial Organizations, or any other labor organization of its employees, by discharging, laying off, or refusing to re-instate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right

to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the Act.

9. The Board and the Court erred in ordering petitioner to:

Offer to Boykin Barnett, Willie Dodson and Lovena Johnson immediate and full re-instatement to their former or substantially equivalent position without prejudice to their seniority, or other rights and privileges.

10. The Board and the Court erred in ordering petitioner to:

Make whole Boykin Barnett, Willie Dodson and Lovena Johnson for any loss of pay they may have suffered by reason of petitioner's alleged discrimination against them, by payment to each of them of a sum of money equal to that which he or she normally would have earned as wages from the date of his or her discharge or lay-off to the date of petitioner's offer of re-instatement, less his or her net earnings during said period.

11. The Board and the Court erred in ordering respondent to:

Post immediately in conspicuous places in its plant in Red Oak, Georgia, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees, stating: That it would not engage in the conduct from which it was ordered to cease and desist.

12. The Board and the Court erred in ordering petitioner to:

Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the Board's order, what steps the petitioner had taken to comply with said Board's order.

Conceding jurisdiction, petitioner assails the findings of the National Labor Relations Board as being unsupported by substantial evidence, and challenges the validity and appropriateness of its order finding petitioner guilty of anti-union activity, and requiring re-instatement of discharged employees and their compensation for lost wages. Therefore, the Court erred in its judgment affirming the decision of the Board and Trial Examiner.

CONCLUSION

The petition for certirorari should be granted in order that this court may review the decision of the United States Circuit Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

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Attorneys for Petitioner.

P. O. Address
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Atlanta 3, Georgia

SUPPORTING BRIEF

Petitioner is a small corporation engaged in manufacturing hats at Red Oak, Georgia, working about 65 employees. The business is being operated solely by Mrs. Josephine M. Sewell, the widow of R. A. Sewell, decased; she being the sole and only person in charge of the affairs of said corporation. (R. 4-5) There is a department in said plant known as the Finishing Department where the employees (complainants in this cause) did their work. In the early Spring of 1943, a small group of employees in this department requested Mr. Beck, the working foreman, for a raise (R.p. 117 Respondent's); this request was relayed to Mrs. Sewel after which the employees were notified by Beck that Mrs. Sewell had refused their request (R. p. 118 Respondent's).

Later on, one of the complainants discussed the organization of a union; this being done in the plant amongst the employees in the Finishing Department (R. pp. 4-5 Respondent's). After these discussions, arrangements were made to contact Mr. Charlie Gillman, organizer for the CIO, who same to the Plant on May 7, 1943, and one Denton, and contacted the employees in the Finishing Department of petitioner, wherein it appears that arrangements were made for a further meeting at the home of Lovena Johnson. Accordingly, a meeting was held at the home of Lovena Johnson on May 9, 1943, where a great number of employees of petitioner appeared and discussed the formation of a union. The outgrowth of these discussions and plans was, that an election was arranged in accordance with the terms of the Act, and the same came on and was regularly conducted, which resulted in the defeat of the union by the em-

ployees in said plant. The only evidence appearing in the record about the complainants being connected with the union is the signing of a card by the complainants who testified in the complaint (R. pp. 184-185 Respondent's).

The only complaint appearing about anti-union activities on the part of Mrs. Sewell, or any of her purported supervisory employees, was the fact that Hugo Sewell three times passed the place where they had met during the noon hour for the purpose of organizing a union.

The only thing Mrs. Sewell ever did was to call one of the employees, Mrs. Gertrude Kimbrough, into the office where a meeting was arranged with her; there being present Mrs. Gertrude Kimbrough, representing the union; Mr. Robinson, plant superintendent; Mrs. Sewell's son, Robert A. Sewell, Jr., and her stenographer, Mrs. Myrtie Pattillo, where it appeared that Mr. Robinson, plant superintendent, stated in open meeting that if they wanted to organize they had a perfect right to do so (R. App. p. 43). Robert A. Sewell, one of the sons of Mrs. Josephine Sewell, stated to Mrs. Gertrude Kimbrough that she need not talk unless she wanted to. There were no words of criticism against the union used by any of the persons in said meeting, and the evidence fails to show a single protest that had been made by Mrs. Sewell against the organization of the union in said plant.

Thus, it is respectfully insisted that the finding of the Board adjudging petitioner guilty of anti-union activity is wholly lacking in substantial evidence to support such

a finding. We recognize the exclusive right of the Board to draw inferences, but there must be some substantial evidence from which the inferences can be drawn. There is nothing in the record to show that petitioner has ever assumed a hostile position towards the formation of a union; nor is there any evidence appearing in the record to support an inference that petitioner's conduct had the effect of influencing any of the employees against the union.

The Board found in favor of petitioner as to the employee Julia Scarbrough; it also found that none of the employees were discharged and that Lovena Johnson was not laid off for alleged reason that on June 2, 1943, they testified in a representation proceedings involving petitioner's employees. It further found that the only evidence bearing upon this issue is to be found in the testimony of Beck who testified that Mrs. Sewell was apparently displeased because he gave these employees permission to leave the plant at 12:30 P. M., although they did not have to appear at the hearing until 3:30 P. M., and that on the same afternoon Mrs. Sewell gave him orders to assign Elsa Harris to the wool operation, which had been Willie Dodson's regular assignment for over two years; however, neither Mrs. Sewell's displeasure nor her orders to assign another employee to Dodson's work, establishes an intent to discriminate against these employees. On the contrary, the fact that the Board's witnesses, Willie Carithers, also appeared and testified at the same hearing, but was not discriminated against, leads to the conclusion that respondent did not discriminate against an employee merely for testifying.

"We accordingly find that the allegation that the re-

spondent discriminated in regard to the hire and tenure of employment of Willie Dodson and Lovena Johnson within the meaning of Section 8 (4) of the Act has not been sustained, and we shall, therefore, dismiss that section of the complaint."

These findings are tantamount to a complete exoneration of Mrs. Sewell in all other respects insisted upon by the respondents in this case.

The Board further disagreed with the trial examiner in its findings, as follows: "The Trial Examiner found that while visiting the home of employee Davis in May, 1943, Myrtie Pattillo told Davis she hoped that Davis would not join the union. This finding is based solely upon the uncorroborated hearsay testimony of employee Kimbrough. Pattillo denied having made the statement attributed to her and Davis was not called to testify. Under all the circumstances we disagree with the Trial Examiner's finding as to the alleged conversation between Pattillo and Davis."

This is likewise tantamount to eliminating practically the entire utterances condemning petitioner on the facts of this case; in other words, the facts as a whole, do not constitute such anti-union activity as would in any respect influence the employees against the organization of a union, and it certainly could not influence other employees that were not then members of a union; it then appearing that none of said members had ever been organized and that there was no union in existence by the employees of petitioner; if such was the fact, what was the need of calling the election, and what was the act or deed of petitioner which brought about such a conclusion as reached by the Board in this cause?

The above argument in this matter will equally apply to the discharged employees and their re-instatement; if, in fact, the resolution made in the beginning of the organization of this union was carried out, then this Company should not be penalized in the amount named by the Board; neither should it be forced to adhere to the order made by them that petitioner cease and desist from further anti-union activities.

In the case of Boeing Airplane Company v. National Labor Relations Board, 140 Fed. (2d) 423, the Court laid down the rule as follows (headnotes 2, 3 and 4):

> "The National Labor Relations Board, in making findings under National Labor Relations Act, must observe traditional rule against presumption of liability or bad faith. National Labor Relations Act, Secs. 1 et seq. 10 (f), 29 U.S.C.A. Secs. 151 et seq. 160 (f).
>
> "The evidence relied upon by National Labor Relations Board to support its findings must be substantial and not a mere scintilla, and the inferences drawn must be reasonable inferences generated by facts. National Labor Relations Act, Secs. 1 et seq. 10 (f), 29 U.S.C.A. Secs. 151 et seq. 160 (f).
>
> "The mere filing of charges by an aggrieved party or a complaint by National Labor Relations Board creates no presumption of unfair labor practices under National Labor Relations Act, but it is incumbent upon one alleging violation of the Act to prove charges by fair preponderance of all the evidence. National Labor Relations Act, Secs. 1 et seq. 10 (b), 29 U.S.C.A. Secs. 151 at seq. 160 (b)."

An examination of the facts in the case above cited will demonstrate that, insofar as an announced policy on the

part of the company extending to employees freedom of activity in forming a union, are similar to the situation existing here. The main difference being, that in the case at bar the company being small and the number of employees limited, the meeting was held in the Company's office in which this policy was announced rather than publishing such policy on the bulletin board as was done in the Boeing Aircraft Company case. Of course, the number of employees involved in the Boeing Aircraft Company case would have made it impractical to have dealt with the question other than by published bulletins.

In the conclusion of the opinion in the Boeing Aircraft Company case, supra, Judge Murrah, in delivering the opinion of the Court on page 435, had the following to say:

> "When the conduct of Boeing is judged against the background of its announced attitude and policy, it cannot be held to have discriminated in the hire and tenure of its employees, and from the whole record we are convinced that Boeing has not engaged in a course of conduct which can be construed as an interference with, restraint or coercion of its employees in the exercise of their collective bargaining rights under Section 7 of the Act."

The Court in support of its decision that the Board must observe the traditional rule against the presumption of liability or bad faith and that the evidence relied upon to support the findings of the Board must be substantial and not a mere scintilla, and the inferences drawn must be reasonable inferences generated by facts—not surmise and speculation, cited the cases of Consolidated Edison v. National Labor Relations Board, 305, U. S. 197, 229, 59

S. Ct. 206, 23 L. Ed., 126; National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292, 299, 59 S. Ct. 501, 83 L. Ed. 660; National Labor Relations Board v. Standard Oil Co., 124 Fed. (2d) 895, and various other authorities which will be found in the decision.

We think that the above authority is controlling in the present case and the certiorari should be granted and demands a reversal of the finding of the Board and the decision of the Court below.

Respectfully submitted,

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 500

SEWELL HATS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (S. R. 116–118)[1] is reported in 143 F. (2d) 450. The findings of fact, conclusions of law, and order of the National

[1] The appendices filed by the Board and the company in the court below are referred to as "B. A." and "P. A.," respectively. The supplemental proceedings in the court below have been bound into the company's appendix (pp. 116–122) and are referred to as "S. R." The printed "Transcript of Record" filed in the court below is referred to as "R." These documents have been lodged with the clerk of this Court.

Labor Relations Board (R. 102–108, 55–80) are reported in 54 N. L. R. B. 278.

JURISDICTION

The decree of the court below (S. R. 119–120) was entered on August 7, 1944. The petition for a writ of certiorari was filed on September 25, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's findings that petitioner interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act, and its findings that petitioner discouraged membership in a labor organization by discriminatorily discharging two of its employees, and laying off another employee, thereby violating Section 8 (1) and (3) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix, *infra*, p. 15.

STATEMENT

Upon the usual proceedings, the Board, on January 5, 1944, issued its findings of fact, conclusions of law, and order (R. 55–78, 102–108).

The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows: [2]

In February 1943, a group of petitioner's employees requested Mrs. R. A. Sewell, president and general manager of petitioner (R. 58; P. A. 2-3), which maintained its principal office and place of business at Red Oaks, Georgia (R. 58; B. A. 61), to grant them wage increases (R. 58–59; B. A. 17–18, 34, 42, 79–80, 117–118). Mrs. Sewell put the group off with the statement that wages had been frozen, but that she would confer with her auditor concerning the matter (R. 59; B. A. 18, 42). Dissatisfied with Mrs. Sewell's response to their request, the group decided to form a union (R. 59; B. A. 18, 43, 80, 93–94).

Petitioner soon became aware of the efforts of its employees to organize (R. 59, 62; B. A. 69–70, P. A. 5, 114, 116, 157–158). Immediately upon learning of these activities, Mrs. Sewell called a meeting of petitioner's entire supervisory staff (R. 59, 62; B. A. 72, 120–121, P. A. 5, 116–117, 345–347), and also summoned employee Gertrude Kimbrough to the meeting (R. 59, 62; B. A. 72, P. A. 5, 116–117). When Foreman William Beck arrived at the meeting, Mrs. Sewell asked him, "What is wrong in the finishing room?"

[2] In the following statement, the references preceding the semicolons are to the Board's findings, and the succeeding references are to the supporting evidence.

Beck replied, "Nothing that I know of," whereupon Mrs. Sewell commented that she had heard that the girls were forming a union. (R. 62–63; B. A. 120, 145, 170.) Mrs. Sewell then attempted to obtain more information about the union movement in the plant from employee Kimbrough, and to ascertain from her the identity of the leaders (R. 59, 63; B. A. 72–73, 77, P. A. 5–6).

On May 6, Mrs. Willie Dodson arranged with Charles H. Gillman, a representative of the Union,[3] to meet with the employees during their lunch hour on May 7 (R. 59–60; B. A. 19–20, 81). Mrs. Dodson, Mrs. Lovena Johnson, and Mrs. Julia Scarbrough, all employees in petitioner's finishing room (B. A. 16, 79, 2), on the morning of May 7, invited their fellow employees to meet with Gillman at noon that day (R. 60; B. A. 20, P. A. 602–603). Gillman conferred with the employees during their lunch hour on May 7 (R. 60; B. A. 5–7, 20–21, 33–34, 44, 81). At that time, it was decided to have a meeting at Mrs. Johnson's house on Sunday, May 9 (R. 60; B. A. 6, 21, 81).

On May 9, the union meeting was held at Mrs. Johnson's house (R. 61; B. A. 7, 23, 45, 83, 100), and arrangements were made to call on the employees who had not attended the meeting, to solicit their joining the Union (R. 61; B. A. 8, 23,

[3] The Congress of Industrial Organizations (B. A. 19).

83, 100). The following day, May 10,[4] a group of employees, including Mrs. Johnson, Mrs. Dodson, and Boykin Barnett, called at the homes of a number of employees, including almost all petitioner's colored employees (R. 61; B. A. 8, 23–24, 83, 95, 100). Barnett, a colored employee, was taken with the group to point out the homes of other colored employees (R. 61; B. A. 8, 24, 83, 100). That afternoon the group encountered Mrs. Pattillo, Mrs. Sewell's assistant, driving in the colored section of the district (R. 64; B. A. 8–9, 24, 36, 49, 76).

Early the next morning, May 11, Mrs. Pattillo called at the home of Mrs. Kelly Glass, Barnett's mother-in-law (R. 64, 67; B. A. 101, 113). She cautioned Mrs. Glass to tell her two sons, who worked at the plant, not to join the Union (R. 64, 67; B. A. 101). Mrs. Pattillo asked Barnett, who was present during the conversation, if he had joined the Union. Barnett said he had not, whereupon Mrs. Pattillo asked him "Who were the ladies that you were riding around with [yesterday] * * * was it Mrs. Scarbrough in there." (R. 67; B. A. 101, 102.) When he replied in the affirmative, Mrs. Pattillo ominously inquired if he knew that Mrs. Scarbrough had been discharged on the preceding Friday (R. 67;

[4] The finishing room was closed down from May 10 until May 17, 1943 (R. 60; B. A. 25, 45–46, 122, P. A. 130–131, 531–532).

B. A. 102). She later admonished him, "Boykin, don't you join that Union" because "the Union would make Mrs. Sewell awful mad" (R. 67; B. A. 102).

On June 2, the Board held a hearing in a representation proceeding initiated upon the Union's petition requesting the Board to investigate and certify the statutory bargaining representative of petitioner's employees (R. 61; B. A. 25–26, 85). As part of the proceedings, the Board, on June 28, directed an election to be conducted at petitioner's plant (50 N. L. R. B. 883). Subsequent to the issuance of the Direction of Election, Leon Cosper, foreman of the box department, warned one of his subordinates that "if [he] wanted a job there [he] would have to vote against the Union" (R. 65; B. A. 60, 57).

The Board found that petitioner, by the foregoing statements and activities, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7, thereby violating Section 8 (1) of the Act (R. 62–65, 66).[5]

The Board found further (R. 69, 76, 77–78, 104–105) that petitioner violated Section 8 (3)

[5] That petitioner's opposition to the Union was effective in discouraging membership in the Union is evident from the fact that employee Solley refused to attend a union meeting at Mrs. Johnson's home saying, "I was for you [girls], but now I am against you * * * because Mrs. Sewell said that anybody that joined the Union would be without work" (R. 63; B. A. 87–88).

and (1), in that it discriminatorily discharged Boykin Barnett and Willie Dodson, and laid off Lovena Johnson, because of their union membership and activity.

Boykin Barnett was employed at petitioner's plant for approximately a year and a half, substantially all of which time he worked as a hat blocker under Foreman Beck in the finishing room (R. 66–67; B. A. 99, 141). He joined the Union on May 7, obtained cards for use in signing up other employees, and thereafter actively solicited the colored employees to join the Union (R. 67; B. A. 107–108). He attended the union meeting at Mrs. Johnson's house on May 9, and accompanied Mrs. Dodson, Mrs. Johnson, and the others when they called on petitioner's colored employees on May 10 to invite them to join the Union (R. 61, 64, 67; B. A. 8, 24, 83, 100). As noted above (p. 5), Barnett's activities on this latter occasion were observed by Mrs. Pattillo, Mrs. Sewell's assistant.

On May 11, while the finishing room was closed down, Barnett injured his hand and was unable to work when the finishing room resumed operations on May 17 (R. 68; B. A. 102, 103). On May 18, he reported his injury to Mrs. Pattillo. She told him to report back when he was able to work. (R. 68; B. A. 103, 109–111, P. A. 131–132.) Several days later he spoke to Mrs. Sewell, who told him to "come back when your hand gets

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better, and you can go to work" (R. 68; B. A. 103–104, 112–113). On May 26, when Barnett attempted to return to work, he was abruptly informed that there was no work for him; that his place had been filled (R. 68–69; B. A. 104, 127-128, 179).

Petitioner contends (Pet. 28–29) that Barnett was discharged because his injury incapacitated him from performing his duties. The Board's rejection of this contention (R. 69) was sustained by the court below (S. R. 117–118). Aside from the fact that Mrs. Pattillo and Mrs. Sewell told Barnett he could return to work when he recovered from his injury, the Board's finding is further supported by the fact that petitioner had never discharged any other employee who was absent because of sickness or injury (R. 69; B. A. 146, P. A. 77–78). Moreover, it is undisputed that on May 11, immediately after petitioner learned of Barnett's union activities, and before he was injured, Mrs. Sewell advised Foreman Beck that she was going to discharge Barnett. Beck protested stating, "We need Barnett bad; these other blockers can't get [out] the hats we need." (R. 68; B. A. 127, 178.) [6]

Mrs. Willie Dodson worked for petitioner for over seven years. During the last two and one-

[6] After Barnett was replaced, two men were required to keep production at the level Barnett had maintained by himself (R. 67; B. A. 128, 148).

half years, she operated a finishing department machine which sewed the sweat bands on wool hats (R. 69–70; B. A. 13, 31, 125). Mrs. Dodson was among the group of employees who decided to form a union in February 1943, after Mrs. Sewell rejected the request for a wage increase (R. 58–59; B. A. 43, 80). It was at Mrs. Dodson's request that the union representatives met with the employees at the plant on May 7 (R. 59–60; B. A. 5, 19, 81). She signed a union membership application on May 7, and actively solicited other employees to join the Union (R. 76; B. A. 23, 62, 69, 150–151, 154, P. A. 256, 295, 784). She was in the group of employees observed by Mrs. Pattillo making the rounds of the homes of petitioner's employees for the purpose of enlisting them in the Union (R. 61, 64; B. A. 8, 23–24). On June 2, Mrs. Dodson testified on behalf of the Union at the representation hearing (R. 61, 76; B. A. 25–26).

On June 3, Mrs. Dodson's machine broke down (R. 71; B. A. 26–27). The next day two mechanics worked on the machine, but were unable to repair it (R. 71; B. A. 27–28, 171). The mechanics told Mrs. Sewell that the only man who could fix the machine was out of town, but was expected back over the week-end and would probably come to the plant on Monday, May 7 (R. 71; B. A. 28). Mrs. Sewell then advised Mrs.

Dodson to go home and await further instructions (R. 72; B. A. 28–29, 47–48, 52 cf. 173, 175–176).[7]

Not having been notified to return to work by 9 a. m. Monday, June 7, Mrs. Dodson went to Atlanta (R. 72; B. A. 28, 39). When she reported for work at the usual time the next morning she was discharged, notwithstanding her protest that she understood that she was not to come back to work until notified (R. 74; B. A. 29–30, P. A. 20, 92). The reason given for her discharge was that she was "off without permission" (R. 74; B. A. 30).

Petitioner has no rule penalizing unexcused absences, and ordinarily was very lax in enforcing attendance at work (R. 74–75; B. A. 30–31, 64–65, 125–126, P. A. 348). Prior to Mrs. Dodson's discharge, no employee had ever been disciplined in any way, let alone discharged, for unexcused absences, although many employees had been absent without permission (R. 75; B. A. 30, 50–51, 64–65, 90, 125–126, 134, 145–146). Thus, even had Mrs. Dodson deliberately stayed away from work and failed to report the reason for her absence, such an offense, under the prevailing plant rules and customs, would not have resulted in her discharge.

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[7] The testimony concerning Mrs. Sewell's instructions is conflicting. Mrs. Sewell testified that she directed Mrs. Dodson to report for work on the following Monday (P. A. 92). The Board found (R. 73) that Mrs. Dodson understood that she was not to report for work until notified by Mrs. Sewell to do so.

Mrs. Lovena Johnson was first employed by petitioner in 1941, and was assigned to sewing sweat bands on wool hats. Thereafter she was trained in various other operations connected with the finishing of wool hats. (R. 76; B. A. 48, 78, 96–98, 117, 125, 152–153, 155, P. A. 367–374, 390–391, 485–486.) She continued to work on wool hats until the regular straw hat operator resigned in November 1942, at which time Mrs. Johnson was transferred to straw hat operations (R. 76; B. A. 90, 91, 131). When no work was available on this job,[8] she worked on wool hats (R. 76; B. A. 85, 131, 149, 151, 152–153), and when production demands exceeded Mrs. Dodson's capacity to sew sweat bands on wool hats, Mrs. Johnson customarily assisted in that operation (R. 76–77; B. A. 85, 92, 131). It was petitioner's custom to transfer employees from one operation to another (B. A. 85–86, 123–124, P. A. 54–56), and Mrs. Johnson's predecessor on the straw hat operations was ordinarily assigned to wool operations at the close of the straw hat season (B. A. 90, P. A. 422).

Mrs. Johnson was spokesman for the group of employees who requested wage increases of Mrs. Sewell in February 1943 (R. 59, 77; B. A. 17–18,

[8] The volume of straw hats manufactured was comparatively small, and work on them was only carried on from approximately November to June, while wool hat production was continuous throughout the year (R. 76; B. A. 131–132, P. A. 314–315).

34, 42, 118), and participated in the subsequent decision of the group to form a union (R. 59; B. A. 18, 43, 80). She signed a union membership application on May 7, and, as above noted (p. 4), the first organizational meeting of the Union was held at her home (R. 61; B. A. 7, 23, 45, 81–82, 83, 100). She accompanied the group when they called on the employees to ask them to join the Union on May 10, 1943 (R. 61, 64; B. A. 8, 23–24, 83). She was diligent in activities on behalf of the Union (R. 77; B. A. 62, 99, 150–151, P. A. 256, 295, 602, 606), and was a witness for the Union at the representation case before the Board (R. 61, 77; B. A. 85, 122–123, 168, P. A. 195–196, 208–209).

On June 11, 1943, Mrs. Johnson was laid off by Mrs. Sewell, allegedly because there was no work for her to do (R. 77; B. A. 86–87). The Board found (R. 77), however, that the record did not sustain petitioner's contention. While work on straw hats had more or less come to a standstill at the time of her lay-off, there had been no slackening in the work which Mrs. Johnson customarily performed on wool hats along with her straw hat work. Only 3 days before Mrs. Johnson was laid off, Mrs. Sewell started training employee Elza Harris to operate the sweat-band sewing machine (R. 77; P. A. 288–289, 294–295), work which Mrs. Johnson did when there was not sufficient volume of straw hat work (R. 76–77; B. A. 85, 92, 131).

The volume of sweat-band sewing at the time of Mrs. Johnson's lay-off was such that it was necessary for Mrs. Harris and another trainee on the sweat-band machine, Mrs. Thomas, to work overtime to turn the work out (R. 104; B. A. 87, 149, P. A. 289–295, 479–483).[9] Other employees in the finishing room also worked overtime in June, July, and August 1943 (R. 104; B. A. 155–157, P. A. 479–483, 486–491). As a matter of fact, petitioner was experiencing a shortage of labor about this time (B. A. 135–136, 146, 162). Shortly after Mrs. Johnson's lay-off, petitioner hired a new and inexperienced employee to work regularly in the finishing department (R. 77; B. A. 89, P. A. 97). She was assigned to sewing welts and sweat bands in wool hats, both of which operations Mrs. Johnson had formerly performed (R. 76–77; B. A. 85, 89–90, 131).

The Board found that petitioner discouraged membership in the Union by its discriminatory discharge of Barnett and Mrs. Dodson, and its lay-off of Mrs. Johnson, thereby violating Section 8 (3) and (1) of the Act (R. 77–78, 104–105). The Board's order directed petitioner to cease and desist from the unfair labor practices found, to offer reinstatement with back pay to Barnett, Mrs. Dodson, and Mrs. Johnson, and to post appropriate notices (R. 106–107).

[9] Significantly, neither Mrs. Harris nor Mrs. Thomas was a member of the Union (B. A. 48, 158, P. A. 256).

Thereafter, petitioner filed a petition for review in the court below (R. 1–25), and the Board answered requesting enforcement (R. 27–31). On July 6, 1944, the court handed down its opinion (S. R. 116–118), and on August 7, 1944, entered its decree (S. R. 119–120), enforcing the Board's order in full.

ARGUMENT

Petitioner's contention (Pet. 28, 32, 34–35) that the Board's findings of unfair labor practices are not supported by substantial evidence presents no question of general importance. In any event, the evidence summarized in the statement (*supra*, pp. 3–13) affords full support for the challenged findings.

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents no conflict of decisions nor any question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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OCTOBER 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *

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